

Attachment D
Proposed Restaurant Lease Agreement

Part 1 of 4

PROPOSED RESTAURANT LEASE - AIRPORTS

McCLELLAN –PALOMAR AIRPORT

CARLSBAD, CALIFORNIA

LESSOR: COUNTY OF SAN DIEGO, a Political
Subdivision of the State of California

LESSEE: _____

PARCEL: _____

COUNTY CONTRACT NO. _____

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EXHIBIT I – MASTER DEVELOPMENT PLAN

COUNTY OF SAN DIEGO
RESTAURANT LEASE

THIS RESTAURANT LEASE AGREEMENT ("Lease") is made and entered into effective as of _____ ("Effective Date"), by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), and _____ ("Lessee").

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, County hereby leases to Lessee, and Lessee hereby leases from County, the Premises described below upon the following terms and conditions:

ARTICLE 1
SUMMARY OF BASIC LEASE PROVISIONS

1.1 Lessor: COUNTY OF SAN DIEGO, a political
subdivision of the State of California

Address for notice:

Director
Department of General Services
Building 2
5555 Overland Avenue
San Diego, California 92123

with a copy to:

Airports Director
1960 Joe Crosson Drive
El Cajon, California 92020

1.2 Lessee: _____

Address for notice:

With a copy to:

1.3 Premises. The Premises means that approximately _____ acres of real property designated as County Parcel Number _____, as delineated on Exhibit "A" (DESCRIPTION AND PLAT OF THE PREMISES) attached hereto and by this reference incorporated herein, and are located at McClellan-Palomar Airport, Carlsbad, California.

1.4 County's and Lessee's Lease Administrators. This Lease shall be administered on behalf of County by the Director, Department of General Services, County of San Diego, or by such person's duly-authorized designee (referred to collectively hereinafter as "County's Lease Administrator"), and on behalf of Lessee by _____ or by such other person as may be designated in writing by Lessee (referred to hereinafter as "Lessee's Lease Administrator").

1.5 Effective Date. The date this Lease is approved by the County's Board of Supervisors. See Section 3.1 (TERM; DEFINITIONS).

1.6 Commencement Date. The commencement date shall be July 1, 2008. See Section 3.1 (TERM; DEFINITIONS).

1.7 Term. The term of this Lease shall be Ten (10) years commencing on the Commencement Date and terminating June 30, 2018.

1.8 Rent Due Date. See Section 4.1 (MINIMUM MONTHLY RENT).

1.9 Rent. The Minimum Monthly Rent is _____ Dollars (\$_____). Minimum Monthly Rent is payable as stated in Section 4.1 (MINIMUM MONTHLY RENT).

1.10 Rental Rate Adjustments. See Section 4.3 (RENT RATES AND ADJUSTMENTS).

1.11 Additional Rent. Any and all sums of money or charges required to be paid by Lessee to County pursuant to the provisions of this Lease shall be paid as "Additional Rent" (for example: percentage rents, late charges, interest, equity payments, processing fees, etc.)

1.12 Security Deposit. \$_____ See Article 5 (SECURITY DEPOSIT).

1.13 General Description of Lessee's Use of Premises. Lessee shall use the Premises solely for the uses defined in Article 6 (POSSESSION AND USE).

1.14 Definitions. As used in this Lease, the following terms shall have the meanings attached to them in this Section unless otherwise apparent from their context:

- a. "Airport" means McClellan-Palomar Airport, Carlsbad, California.

- b. "F.A.A." means the Federal Aviation Administration.
- c. "ALP" means the FAA approved Airport Layout Plan for McClellan-Palomar Airport.
- d. "Board" means the Board of Supervisors of the County of San Diego.
- e. "Airports Director" means the Airports Director, of the Department of Public Works, County of San Diego, or upon written notice to Lessee, such other person as shall be designated from time-to-time by the Board.
- f. "Standards" means the Aviation Areas Development Standards and the Industrial and Aviation Areas Restaurant Performance Standards attached as Exhibits "C" and "D" hereto.
- g. "City" means the City of Carlsbad.

1.15 Exhibits To Lease. The following drawings and special provisions are attached hereto as exhibits and made a part of this Lease:

<u>EXHIBIT "A"</u>	-	Description and Plat of the Premises
<u>EXHIBIT "B"</u>	-	FAA Requirements
<u>EXHIBIT "C"</u>	-	Aviation Area Development Standards
<u>EXHIBIT "D"</u>	-	Industrial and Aviation Areas, Restaurant Performance Standards
<u>EXHIBIT "E"</u>	-	Insurance Requirements
<u>EXHIBIT "F"</u>	-	County of San Diego Required Sublease Provisions
<u>EXHIBIT "G"</u>	-	Intentionally omitted
<u>EXHIBIT "H"</u>	-	Work Letter Agreement - Airports
<u>EXHIBIT "I"</u>	-	Master Development Plan

1.16 Construction of Lease Provisions. The foregoing provisions of this Article summarize for convenience only certain key terms of the Lease delineated more fully in the Articles and Sections referenced therein. In the event of a conflict between the provisions of this Article and the balance of the Lease, the latter shall control.

1.17 Custom Lease Charge. County utilizes a standard form to lease property at the McClellan-Palomar Airport. Significant modifications of the standard lease form are discouraged. In order to compensate County for the added expense of negotiating and drafting this non-standard Lease, Lessee shall pay to County \$5,000 upon the execution of this Lease by County. This amount shall be due and payable to County as Additional Rent.

ARTICLE 2 LEASE OF PREMISES

2.1 Description. County hereby leases to Lessee and Lessee hereby leases from County, for the rent and upon the covenants and conditions hereinafter set forth, the Premises described in Section 1.3 (PREMISES) above, together with the non-exclusive use of all public airport facilities at the Airport when reasonably related to the use and occupancy of the Premises for the purposes permitted by this Lease.

2.2 Mineral Rights. Notwithstanding any provision of this Lease to the contrary, County hereby expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located upon or beneath the surface of the Premises. County shall have the right to enter the Premises at any time during the Term for the purpose of operating or maintaining such drilling or other installations as may be necessary or desirable for the development of any such gas, oil, mineral or water deposits.

2.3 Reservations to County/Easement Reservations. Lessee accepts the Premises subject to any and all existing easements and encumbrances. County reserves the right to establish, to grant or to use easements or rights-of-way over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit the Premises, and to enter the Premises for any such purpose; provided, however, that any such grant of rights by County shall require that the Premises be restored to their preexisting condition. County hereby reserves unto itself, for the benefit and use for aviation purposes by the County and the public, an easement over any existing taxiways, or any taxiways developed by Lessee, within the Premises. Provided however, no right reserved by County in this Section 2.3 shall be so exercised as to interfere unreasonably with Lessee's operations hereunder. County agrees that should the exercise of any of the rights reserved by County in this Section 2.3 temporarily interfere with the use of any or all of the Premises by Lessee, the Rent shall be reduced in proportion to the interference with Lessee's use of the Premises.

2.4 Lease Subordinate to Conditions and Restrictions Imposed by Public Agencies on Airport Operations. This Lease shall be subordinate and subject to the terms, conditions, restrictions and other provisions of any existing or future permit, lease and agreement between County and any federal, State or local agency governing County's control, operation or maintenance of the Airport, or affecting the expenditure of federal funds for the Airport. Lessee shall be bound by all such terms

and conditions, and shall, whenever County may so demand, execute, acknowledge or consent to any instrument evidencing such terms, conditions, restrictions or provisions. Without limiting the generality of the foregoing, this Lease and Lessee's occupancy of the Premises are expressly made subordinate and subject to the terms, conditions, restrictions and other provisions of those requirements of the Federal Aviation Administration specifically set forth in Exhibit "B" (FAA REQUIREMENTS) and Lessee shall be bound by all such requirements.

ARTICLE 3 TERM OF LEASE

3.1 Term; Definitions. This Lease shall not take effect until the "Effective Date," which is defined as the date of approval of this Lease by County's Board of Supervisors. Subject to approval of this Lease by the County Board of Supervisors, the term ("Term") shall commence on the commencement date ("Commencement Date") specified in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS) and shall continue thereafter for the period specified in such article, unless sooner terminated as hereinafter provided in this Lease. Except as otherwise specifically stated in this Lease or in any subsequent amendments hereof, the terms and conditions of this Lease shall remain in effect following any extension, renewal or holdover of the original Term.

3.2 Early Termination Through County Buy-Out.

3.2.1 Calculation of "Buy-Out" Price. In the event that County should require the Premises at any time during the Term, County reserves the right to terminate this Lease upon two hundred (200) days' prior written notice and payment to Lessee of a sum of money calculated as follows.

a. Commencing within twenty (20) days following receipt by Lessee of County's notice of its intention to terminate, County and Lessee shall attempt to agree upon the fair market value of the leasehold estate for the remaining term of the Lease in the Premises ("Fair Market Value"). If the parties are unable to agree upon the Fair Market Value within thirty (30) days thereafter, then each party shall designate, by written notice to the other party within ten (10) days after expiration of said 30-day period, a real estate appraiser who shall be a member of any nationally recognized professional real estate appraisal association that examines its designated members, and who also has at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located, to appraise and determine the Fair Market Value. If either party fails to designate an appraiser, or if either appraiser fails to appraise and determine the Fair Market Value, one appraiser shall determine the Fair Market Value.

b. If two appraisers are designated, the two shall promptly meet in an attempt to set the Fair Market Value. If the two appraisers are unable to agree upon the Fair Market Value based on their respective appraisals within sixty (60) days after designation of the second appraiser, they shall appoint a third appraiser meeting the qualifications stated above within ten (10) days after expiration of the sixty-day period provided to the two appraisers to set the Fair Market Value. If the

two appraisers are unable to agree on a third appraiser, either of the parties to this Lease, by giving ten (10) days' written notice to the other party, can apply to the then president of the Real Estate Board of San Diego County for the selection of a third appraiser, who will also appraise and determine the Fair Market Value. Each party shall pay the fee of the appraiser it designates and one-half (1/2) the cost of the third appraiser. Within sixty (60) days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Value. If a majority of the appraisers are unable to agree, then the average of the three appraisals shall be the Fair Market Value; provided, however, if the low appraisal is more than ten percent (10%) lower and/or if the high appraisal is more than ten percent (10%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the designated appraisers shall fail to appraise and determine the Fair Market Value within the timeframes set forth herein, then the Fair Market Value shall be set based on the average of the appraisal(s) which were completed pursuant to this section.

c. In determining the Fair Market Value, the appraisals shall evaluate the monthly amount which the Premises could be expected to return to the County if offered for lease on the open market under normal circumstances, giving due consideration to other properties located in the geographic vicinity of the Premises, desirability and utility of the Premises and similar relevant matters. Improvements placed upon the Premises by the Lessee since the Commencement Date of this Lease shall be considered in arriving at the Fair Market Value. After the Fair Market Value has been set, the appraisers shall immediately notify the parties in writing.

d. Notwithstanding any of the foregoing provisions of this Section to the contrary, if the procedure for calculating the Fair Market Value set forth above produces a sum less than the sum of the total outstanding principal balance(s) on any Mortgage(s) encumbering the Premises to which County has consented as required by this Lease, then the Fair Market Value shall be increased to an amount equal to the sum of the total outstanding principal balance(s) on said Mortgage(s), not including any interest, late charges or other penalty which may be due on said Mortgage(s), and the entire Fair Market Value payment shall be paid by County to the mortgagee(s) on such Mortgage(s). If the procedure for calculating the Fair Market Value set forth above produces a sum greater than the sum of the total outstanding principal balance(s) on any Mortgage(s) encumbering the Premises to which County has consented as required by this Lease, then the Fair Market Value shall be paid, first, to such mortgagee(s) to satisfy the sum of the total outstanding principal balance(s) on said Mortgage(s), not including any interest, late charges or other penalty which may be due on said Mortgage(s), with the remaining amount of the Fair Market Value payment paid to Lessee.

e. If the parties cannot arrive at the Fair Market Value through use of the foregoing procedure, the question may thereafter be submitted to arbitration by notice to the other party. The judgment in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted in accordance with California Code of Civil Procedure § 1280, et seq. The arbitrator's fee shall be split by the parties.

3.2.2 Upon any termination of the Lease pursuant to this Article, all improvements of whatever nature located on the Premises shall become sole property of County, reserving, however, to County the right to require Lessee to remove such improvements within thirty (30) days' following termination of this Lease at Lessee's sole expense.

3.2.3 In consideration of County's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, under the eminent domain and condemnation statutes and constitutional provisions of the State of California and the United States., as applicable. In the event County brings an action in condemnation to terminate this Lease and condemn Lessee's interest herein, the formula set forth above shall constitute a stipulation by the parties hereto as to the fair market value of Lessee's entire right, title and interest in and to the Premises.

3.3 Surrender of the Premises; Quitclaim of Lessee's Interest Upon Termination.

(a) Lessee shall surrender possession of the Premises to County upon expiration of the Term or earlier termination of this Lease. Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to County, within thirty (30) days following receipt of written demand therefor, a good and sufficient deed whereby Lessee quitclaims all right, title and interest in the Premises to County. Should Lessee fail or refuse to deliver such quitclaim deed to County, County may prepare and record a notice reciting the failure of Lessee to do so, and such notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee to the Premises.

(b) Should the manner or method employed by County to re-enter or take possession of the Premises pursuant to the provisions of this Lease give Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any such action shall be one dollar (\$1.00). This provision may be filed in any action brought by Lessee against County, and when so filed shall constitute a stipulation by Lessee fixing the total damages to which Lessee is entitled in such an action.

ARTICLE 4 RENT

4. Rent. Rent shall be paid to the County during the entire term of this Lease. In addition to such other amounts as may from time to time be due and owing County in accordance with this Lease, Lessee shall pay Minimum Monthly Rent and Percentage Rent to the County. Lessee shall only be obligated to pay Percentage Rent to the County, when the Percentage Rent exceeds the Minimum Monthly Rent for the same month or fractional period of such month that the gross income which is used to calculate the Percentage Rent was received by or became due and owing to Lessee. In no event, shall Lessee pay less than the Minimum Monthly Rent to County for each month or fractional period of a month during the Term of this Lease.

4.1 Minimum Monthly Rent. Subject to the adjustments as provided in Section 4.3 (Rent Rates and Adjustments) Lessee shall pay to County Minimum Monthly Rent of _____ Dollars (\$_____) per month for the use and occupancy of the Premises. Lessee shall pay the Minimum Monthly Rent in advance, without setoff, deduction, prior notice or demand, commencing on the Commencement Date. Should the Commencement Date of this Lease be on a day other than the first day of a calendar month, then the Minimum Monthly Rent for such first fractional month shall be computed on a daily basis for the period from the Commencement Date to the end of such calendar month and at an amount equal to one thirtieth (1/30th) of said monthly rent for each such day, and thereafter shall be computed as aforesaid.

4.2 Percentage Rent. County shall be entitled to receive a portion of the gross income of Lessee from the operation of the restaurant facilities required to be constructed by Article 10 of this Lease and calculated in accordance with Section 4.3 (Rent Rates and Adjustments) as additional rent (hereinafter "Percentage Rent"). Lessee shall only be obligated to pay to County that portion of the Percentage Rent which exceeds the Minimum Monthly Rent for the same month or fractional period of such month that the Percentage Rent was received by or became due and owing to Lessee. Lessee shall pay Percentage Rent to the County, without setoff, deduction, prior notice or demand, on the fifteenth (15) day of the month following the month or fractional period of such prior month that the Percentage Rent was received by or became due and owing to Lessee.

4.3 Rent Rates and Adjustments.

(a) Cost of Living Adjustments ("COLA") to the Base Monthly Rent. The Minimum Monthly Rent provided for in Section 4.1 (MINIMUM MONTHLY RENT) shall be adjusted as of the first (1st) anniversary of the Commencement Date, and thereafter every year on such date for the remainder of the Term (each such one-year period is referred to herein as a "COLA Period"), to reflect any increase or decrease in the purchasing power of the dollar. The rent adjustment to be effective during each COLA Period shall be determined by use of the following formula.

$$R=A (B/C)$$

Wherein:

"R" equals the adjusted Minimum Monthly Rent for each month of the COLA Period for which rent is being adjusted;

"A" equals the Minimum Monthly Rent set forth in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS), but only until such time as the parties determine the Renegotiated Rent pursuant to Section 4.3(b) (RENEGOTIATION OF MINIMUM MONTHLY RENT), below, following which time "A" shall then equal such Renegotiated Rent;

"B" equals the monthly Consumer Price Index, as hereinafter defined, for the month of

_____ immediately preceding the commencement of the COLA Period for which the rent is being adjusted; and

"C" equals the monthly Consumer Price Index, as hereinafter defined, for the month of _____ immediately preceding the commencement of the Term; provided, however, that following renegotiation of the rent pursuant to Section 4.3(b) (RENEGOTIATION OF MINIMUM MONTHLY RENT), below, "C" shall equal the Consumer Price Index for the month of _____ immediately preceding such rent renegotiation.

The consumer price index which shall be used as the source for the Consumer Price Index numbers shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the Los Angeles-Riverside-Orange County, CA Area, all items of the index entitled "Consumer Price Index for All Urban Consumers" for the Los Angeles-Riverside-Orange County, CA Area (1982-84 = 100). In the event that such index is not published for the Los Angeles-Riverside-Orange County, CA Area, then another comparable index or source of such information generally recognized as authoritative shall be substituted by agreement of the parties. If the parties should not agree, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure.

(b) Renegotiation of Minimum Monthly Rent. For each five year period of this Lease or any portion thereof, commencing five years from the Commencement Date, the Base Monthly Rent for the first twelve months, or any portion thereof, of any five-year period, shall be adjusted, as applicable, to the higher of (i) the Base Monthly Rent set forth in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS) of the Lease, or (ii) fair market rent ("Fair Market Rent") for the Premises as of expiration of the preceding five-year period, calculated as follows:

(a) Commencing approximately two hundred (200) days prior to the applicable Rent Adjustment Date, County and Lessee shall attempt to agree upon the Fair Market Rent. If the parties are unable to agree upon the Fair Market Rent within thirty (30) days thereafter, then each party shall designate, by written notice to the other party within ten (10) days after expiration of said 30-day period, a real estate appraiser with at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located, to appraise and determine the Fair Market Rent for the Premises for the first twelve months of the next five-year period. If either party fails to designate an appraiser, or if either appraiser fails to appraise and determine the Fair Market Rent for the Premises, one appraiser shall determine the Fair Market Rent.

(b) If two appraisers are designated, the two shall promptly meet in an attempt to set the Fair Market Rent. If the two appraisers are unable to agree upon the Fair Market Rent for the Premises based on their respective appraisals within sixty (60) days after designation of the second appraiser, they shall appoint a third appraiser meeting the qualifications stated above within ten (10) days after expiration of the sixty-day period provided to the two appraisers to set the Fair Market Rent. If the two appraisers are unable to agree on a third appraiser, either of the parties to this Lease,

by giving ten (10) days' written notice to the other party, can apply to the then president of the Real Estate Board of San Diego County for the selection of a third appraiser, who will also appraise and determine the Fair Market Rent for the Premises. Each party shall pay the fee of the appraiser it designates and one-half (1/2) the cost of the third appraiser. Within sixty (60) days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Rent. If a majority of the appraisers are unable to agree, then the average of the three appraisals shall be the Fair Market Rent; provided, however, if the low appraisal is more than ten percent (10%) lower and/or if the high appraisal is more than ten percent (10%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the designated appraisers shall fail to appraise and determine the Fair Market Rent for the Premises within the timeframes set forth herein, then the Fair Market Rent shall be set based on the average of the appraisal(s) which were completed pursuant to this section.

(c) In determining the Fair Market Rent, the appraisals shall evaluate the monthly amount which the Premises could be expected to return to the County if offered for lease on the open market under normal circumstances, giving due consideration to other properties located in the geographic vicinity of the Premises, desirability and utility of the Premises and similar relevant matters. Improvements placed upon the Premises by the Lessee since the Commencement Date of this Lease shall not be considered in arriving at the Fair Market Rent. After the Fair Market Rent has been set, the appraisers shall immediately notify the parties in writing.

(d) If the parties cannot arrive at the Fair Market Rent through use of the foregoing procedure, the question may thereafter be submitted to arbitration by notice to the other party. The judgment in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted in accordance with California Code of Civil Procedure § 1280, et seq. The arbitrator's fee shall be split by the parties.

(c) Percentage Rents. Percentage Rents will be calculated on a calendar month basis and will consist of the percentages as set forth below of the total gross income from all types of sales received by or due and payable to Lessee, without any offset or deductions.

<i>Business Activities</i>	<i>Percentages</i>
Food and Non-Alcoholic Beverages.....	_____ Percent (____%)
Alcoholic Beverages.....	_____ Percent (____%)
Aviation Catering Services.....	_____ Percent (____%)
Vending Machines, Telephones, or Any Other Pay for Service Type Devices.....	_____ Percent (____%)
Other Uses Pre-Approved by County (e.g., banquets or catering).....	_____ Percent (____%)
Uses Not Pre-Approved by County.....	_____ Percent (____%)

The Airports Director, in his sole discretion, may approve in writing additional activities that would otherwise be subject to the twenty percent (20%) fee for unapproved activities. Upon

approval by the Airports Director, such previously unapproved activities may be subject to a percentage rate of up to twenty percent (20%) of the gross receipts received by or due and owing to Lessee for such activities.

4.4 Additional Rent. Lessee shall pay, as Additional Rent, all sums of money required to be paid pursuant to the terms of this Lease which are not payable as Minimum Monthly Rent or Percentage Rent, collectively referred to herein as "Additional Rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum Monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of County. All amounts of Minimum Monthly Rent, Percentage Rent and Additional Rent payable in a given month shall be deemed to comprise a single rent obligation of Lessee to County.

4.5 Delivery of Rent Payments. All rent due under this Lease shall be made payable to the County of San Diego, and shall be considered paid when delivered to:

County of San Diego
DPW Financial Services
5555 Overland Avenue, Suite 2274, Bldg 2
San Diego, California 92123-1248

provided, however, that County may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. County may, but is not obligated to, send monthly rent invoices to Lessee.

4.6 Failure to Pay Minimum Monthly Rent, Percentage Rent, or Additional Rent; Late Charge.

(a) If Lessee fails to pay rent due hereunder within fifteen (15) days of the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year. In addition to such interest, the late payment by Lessee of any monthly rental due hereunder will cause County to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collection costs, and processing and accounting expenses. Therefore, if any such monthly rental is not postmarked or received by County from Lessee within fifteen (15) days of the Due Date, or the first business day thereafter, Lessee shall immediately pay to County a late charge equal to five percent (5%) of such overdue amount. This late charge represents a reasonable estimate of such costs and expenses and is fair compensation to County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, County's acceptance of this late charge shall not constitute a waiver of

Lessee's default with respect to such nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law.

(b) In the event of a dispute between the parties as to the Correct amount of Minimum Monthly Rent, Percentage Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee in payment thereof, without prejudice to County's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, County's Lease Administrator may waive any late charge or interest upon the written recommendation of the Airports Director.

ARTICLE 5 SECURITY DEPOSIT

Lessee has paid or will pay to County the amount set forth as a security deposit in Article 1, "Summary of Basic Lease Provisions," as security for Lessee's performance of this Lease. County shall not be required to keep this Security Deposit separate from its general funds, and Lessee shall not be entitled to interest thereon. County may apply all or a part of the Security Deposit to any unpaid rent or other charges due from Lessee, or to cure any other defaults of Lessee under this Lease, including repair and cleaning of the Premises at the expiration of the Term. If any portion of the Security Deposit is so applied, Lessee shall, within ten (10) days after County's demand, deposit cash sufficient to restore the Security Deposit to its original amount. Any time the Minimum Monthly Rent is increased, Lessee shall deposit additional cash funds sufficient to increase the Security Deposit by the same percentage amount. In the event of bankruptcy or other debtor-creditor proceedings against Lessee, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due County for the periods prior to the filing of such proceedings. The security deposit will not be a limitation on County's damages or other rights under this Lease, or a payment of liquidated damages, or an advance payment of the rent. If Lessee pays the rent and performs all of its other obligations under this Lease, County will return the unused portion of the security deposit to Lessee within sixty (60) days after the end of the Term.

ARTICLE 6 POSSESSION AND USE

6.1 Permitted Uses. Lessee shall use the Premises solely for the operation of a restaurant in accordance the "Industrial and Aviation Areas, Restaurant Performance Standards" attached hereto as Exhibit "D" or such other uses as may be approved from time to time by the Airports Director in writing. No one other than Lessee, its agents and employees, or any sublessee of Lessee approved by County as provided in Article 15 (ASSIGNMENT, SUBLETTING AND ENCUMBRANCES) is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, employees and sublessees, if any, on the

Premises. Lessee acknowledges that County reserves the right to permit others at the Airport to provide one or more of the services to be provided by Lessee on the Premises.

6.2 Duties and Prohibited Conduct. The uses permitted and the facilities and services provided under this Lease for the Premises are to serve the general public. Lessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the opinion of the Airports Director, to other Airport operations of similar type. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of County's Lease Administrator that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods and/or services which, in the sole discretion of County, are inconsistent with the permitted uses of the Premises pursuant to this Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above, and shall comply with all local, State and Federal ordinances and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee only within receptacles provided by Lessee and located in the areas designated by County. Lessee shall not allow or permit installation of any billboards or advertising signs, or aerials or antennas, upon the Premises without first obtaining, in each instance, the written consent of the Airports Director, which consent the Airports Director may give or withhold in his or her sole discretion. Any such signs or antenna installed without such written consent shall be subject to removal without notice at any time, at Lessee's expense.

6.3 Compliance with Laws.

(a) Lessee, at Lessee's sole expense, shall procure, maintain and hold available for County's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the County of San Diego or the city where the Premises are situated, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by Lessee of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them or any of them, whether or not the County is a party to such action or proceeding, that Lessee, or any such sublessee or permittee, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between County and Lessee.

(b) Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS §§ 12101-12213), Title 24 of the California Code of

Regulations ("Title 24") and California Civil Code § 54.1 as they may apply to the Premises. Lessee's obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("Title III") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee's intended use of the Premises, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 USCS §§ 12131 - 12165).

(c) Lessee's duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use thereof ("Land Use Regulations"). County's execution of this Lease shall in no way be deemed to constitute a determination by County that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it infer any such conclusion by County, even if County is the agency which enacts or implements the Land Use Regulations applicable to the Premises. In the event of a conflict between any applicable Land Use Regulations and/or other laws, regulations or restrictions affecting the use of the Premises, the more restrictive provisions shall control.

6.4 Stormwater and Non-Stormwater Discharges. The Airport is subject to federal, state and local laws regarding the discharge of pollutants into the stormwater conveyance system in stormwater and non-stormwater. The programs established by these laws regulate existing activities, the construction process, and impose design requirements on new development and redevelopment. The development related parts of the local stormwater program implement a region-wide model plan, the Standard Urban Stormwater Management Plan or "SUSMP". In addition to the SUSMP, County has developed a Stormwater Pollution Prevention Plan (SWPPP) for the Airport that provides for the elimination of prohibited non-stormwater discharges and the prevention of stormwater pollution through the development, installation, implementation and maintenance of pollution prevention measures, source control measures, and Best Management Practices (BMPs). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground.

Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Airport; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance. Lessee further agrees to conform to the specifications in the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance, Ordinance Nos. 9424 and 9426 (whether or not that County ordinance is legally applicable to Lessee at this Airport), and to the specifications in the SWPPP for the Airport as the same may be amended from time to time by the County Board of Supervisors or the Director of

DPW, respectively.

Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to the Airport and to Lessee may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. County may amend the SWPPP for the Airport in response to such changes, or to implement any County program for stormwater and non-stormwater management at the Airport. Lessee agrees to develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, County ordinances, SUSMP, or the SWPPP for the Airport, Lessee shall be obligated to comply with the more restrictive provision. Lessee shall provide County with unrestricted access to the Premises and/or all pertinent records upon seven (7) days written notice for the purpose of monitoring the implementation and maintenance of required BMPs and/or other pollution control devices at the Premises. Failure to provide County with access or to implement, develop, install, and maintain any pollution control practices or BMPs required by this Section shall constitute a material breach of this Lease.

6.5 Substance Abuse. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any "controlled substance," precursor or analog specified in Division 10 of the California Health and Safety Code, and violation of this prohibition shall be grounds for immediate termination of this Lease.

6.6 Control of Premises. Failure of Lessee to exercise control of the use of Premises to conform to the provisions of this Article shall constitute a material breach of this Lease and such shall be grounds for termination.

ARTICLE 7 UTILITIES

Lessee shall provide and pay for all initial utility deposits and fees, and for all utilities and services necessary for its use and occupancy of the Premises during the Term, including but not limited to gas, water, electricity trash, sewer/septic tank charges and telephone; County shall have no responsibility to either provide or pay for such services. If any such services are not separately metered or billed to Lessee but rather are billed to and paid by County, Lessee will pay to County its pro rata share of the cost of such services, as determined by County, together with its pro rata share of the cost of making such determination. County will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. County shall have the right, at no charge from Lessee, to connect to any water, sewer, electrical, gas and communications lines as are

now or may hereafter be installed on the Premises, and shall have all necessary rights of access to construct and service such connections; provided, however, that Lessee shall have no obligation to pay any additional service fees or charges assessed by any governmental agency, or public or private utility company, for County's use of such connections.

ARTICLE 8 MECHANICS' LIENS

8.1 Mechanics' Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

8.2 Contest of Lien. If Lessee shall desire to contest any lien filed against the Premises, it shall, at the option of the Airports Director, furnish County, within the ten-day period following filing of the lien, security reasonably satisfactory to County of at least one hundred fifty percent (150%) of the amount of the lien, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the same.

8.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given County security to protect the Premises and County from liability for such claim of lien, County may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to County as additional rent, and Lessee shall pay the same to County with interest at the rate specified in Section 16.8 (INTEREST).

8.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

8.5 Notice of Nonresponsibility. County or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility or such other notices which County may deem to be proper for the protection of County's interest in the Premises. Lessee shall, before the commencement of any work which might result in any such lien, give to County written notice of its intention to do so in sufficient time to enable posting of such notices.

ARTICLE 9 SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises, and County shall have no responsibility therefore. Lessee shall construct and maintain fences, gates, walls, barriers and/or other security devices on the Premises in a manner reasonably determined by the Airports Director to prevent unauthorized access to the Premises and/or any adjoining taxiway, runway, building and/or other property from the Premises. All plans for security fencing, gates, walls, barriers and/or other devices must be submitted to and approved by the Airports Director in writing prior to construction. Lessee shall provide lighting adequate, in the judgment of the Airports Director, to prevent unobserved entry onto the Premises and/or any adjoining taxiway, runway, building and/or other property from the Premises during the hours of darkness.

ARTICLE 10 LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES

10.1 Improvements. As partial consideration and security for the granting of this Lease by County, Lessee shall, within +__ () days of the Commencement Date, complete the following required improvements ("Required Improvement") on the Premises,

_____. In addition, with the prior written approval, and at the sole discretion, of the Airports Director, Lessee may, at Lessee's own expense, from time to time make such permanent and nonstructural alterations, replacements, additions, changes, and/or improvements (collectively referred to in this Lease as "Improvements") to the Premises as Lessee may find necessary or convenient for its purposes; provided, however, that the value of the Premises is not thereby diminished. In no event shall Lessee make or cause to be made any penetration into or through the roof or floor of any structure on the Premises without obtaining the prior written approval therefor from the Airports Director and by the appropriate building/inspection department having jurisdiction over the Premises. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by County, the public and other persons and organizations entitled to use of the same.

10.2 Construction Requirements. All Improvements to be made to the Premises shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with any present or future ALP and Aviation Areas Development Standards which are or may be adopted and/or approved by County and the FAA; with the structural, mechanical, electrical, design and quality standards, requirements and criteria specified in Exhibit "H" (WORK LETTER AGREEMENT - AIRPORTS); and with plans and specifications approved in writing by the Airports Director, before commencement of any work. In connection therewith, Lessee shall provide a

minimum of three (3) sets of working drawings or plans showing the planned Improvements, for County's approval, prior to commencing work. All work with respect to any Improvements must be done in a good and workmanlike manner, commenced within ninety (90) days following receipt of approval therefor from the Airports Director, and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. Upon completion of such work, Lessee shall have recorded in the office of the San Diego County Recorder a Notice of Completion, as required or permitted by law, and Lessee shall deliver to County, within ten (10) days after completion of said work, a copy of the Notice of Occupancy and the building permit with respect thereto. Within sixty (60) days following completion of an Improvement, Lessee shall provide the County with two (2) complete sets of "as-built" plans of such Improvement. Any such Improvements shall be performed and done strictly in accordance with the laws and ordinances relating thereto.

10.3 County's Costs; Indemnity. Lessee shall reimburse County for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by County in approving or disapproving Lessee's plans for Improvements. Lessee shall be liable for and shall indemnify and defend County from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from Lessee's construction or installation of any Improvements permitted under this Article.

10.4 Personal Property. Subject to the provisions of the following Section, entitled "Fixtures", all of Lessee's trade fixtures, furniture, furnishings, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property" in this Lease) shall remain the property of Lessee. Lessee shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property

10.5 Fixtures. All Improvements constructed by Lessee together with all other fixtures, excepting Lessee's trade fixtures, permanently attached to the Premises (collectively referred to in this Lease as "Fixtures") shall become the property of County upon expiration or earlier termination of this Lease. Notwithstanding the foregoing, County may require Lessee to remove any Fixtures at Lessee's own expense upon termination of this Lease. Any damage to the Premises occasioned thereby shall be repaired by Lessee in a good and workmanlike manner and the Premises shall be left in as good order and condition as when Lessee took possession thereof, reasonable wear and tear and damage by the elements excepted. In the event Lessee does not remove any Fixtures, Improvements or equipment following direction by County, County may remove, sell or destroy the same, and Lessee shall pay to County the reasonable cost of such removal, sale or destruction, together with the reasonable cost of repair of damages to County's property or improvements or to the Premises resulting therefrom.

10.6 Signs and Lighting. Lessee shall not construct nor permit the erection of any signs on the Premises without the prior written approval of the Airports Director. Lessee shall submit sketches of proposed signs to the Airports Director for approval showing size, materials, colors and location. Such signs must conform to the standards contained in Exhibit "C" (AVIATION AREAS

DEVELOPMENT STANDARDS) and to any laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must conform to the standards contained in Exhibit "D" (INDUSTRIAL AND AVIATION AREAS, RESTAURANT PERFORMANCE STANDARDS) and to any laws or ordinances of governmental agencies having jurisdiction over the Premises.

10.7 Environmental and ALP Compliance. Lessee acknowledges that Improvements may not be constructed on the Premises in accordance with the Master Development Plan until the Improvements are reflected on an FAA approved ALP. Lessee shall be responsible for completing the environmental reviews necessary under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq., and/or the National Environmental Policy Act ("NEPA"), 42 United States Code Section 4321, et seq., for the County and/or FAA to approve this Lease and any revisions to the ALP to reflect the Master Development Plan. Lessee shall pay all costs incurred by County to make the CEQA and/or NEPA findings necessary for the County to approve the Lease and any revisions to the ALP to reflect the Master Development Plan. Lessee shall have the option to hire a qualified contractor to perform required environmental analysis for review by County. Notwithstanding anything in Section 10.1, above, to the contrary, the 36 month time period in which Lessee is required to construct the specified Improvements shall be extended until such time as the FAA approves revisions to the ALP to reflect the Master Development Plan.

ARTICLE 11

TAXES, ASSESSMENTS AND FEES

11.1 Responsibility for Payment of Taxes and Assessments. County shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

11.2 Definition of "Taxes". As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

11.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to

the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 12 REPAIRS; MAINTENANCE

12.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time. Lessee further acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

12.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following as applicable: the roof; the heating, ventilation and air conditioning system; mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all Fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locking and closing devices; all interior window sashes, casements and frames; doors and door frames (except for the painting of the exterior surfaces thereof); floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to prior written approval by the Airports Director. Upon surrender of the Premises, Lessee shall deliver the Premises to County in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

12.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to County, County shall have the right, upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. If County makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay

the cost thereof to County, as Additional Rent, promptly upon receipt of an invoice therefor.

12.4 Right to Enter. Lessee shall permit County, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that County may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from County, and (c) that County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off of the Premises or at the Airport. Nothing herein contained shall imply any duty on the part of County to do any such work which, under any provision of this Lease, Lessee may be required to do, nor shall County's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. No exercise by County of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from County for any injury or inconvenience occasioned thereby.

12.5 Annual Leasehold Compliance Surveys. In addition to County's right to enter pursuant to Section 12.4, above, Lessee acknowledges and accepts County's right and intent to conduct periodic, but not more frequently than annual, Leasehold Compliance Surveys (Surveys). Said Surveys shall be scheduled at a mutually convenient time for County and Lessee, following written notice by County of its intent to conduct a Survey. Said Survey will focus on, but not be limited to, the condition of all leasehold improvements for proper maintenance and building code compliance, compliance with laws, a verification of aircraft locations, and a verification of all commercial subleases on the Premises. Lessee agrees to cooperate with County, or its authorized representative, during the Survey process and provide access to all areas of the Premises, both interior and exterior, including all aircraft storage hangers. In the event County, or its authorized agent, is not able to access all areas of the premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow up survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate County for the personnel cost of the follow up Survey at the current county labor rate, including all overhead expenses, of such follow up Survey. Refusal by Lessee to provide access to all areas of the Premises shall be considered a material breach of the Lease and grounds for termination.

12.6 County Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto ("CCC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CCC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the County under this Lease.

ARTICLE 13 INDEMNIFICATION AND INSURANCE

13.1. Definition of "Lessee Parties" and "County Parties." For purposes of this ARTICLE 13, the term "Lessee Parties" refers singularly and collectively to Lessee and Lessee's officers, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "County Parties" refers singularly and collectively to County and its officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.

13.2 [RESERVED]

13.3 Indemnification.

13.3.1. Lessee's Indemnification of County Parties. To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless County Parties from and against all Claims, as defined in SECTION 13.3.2, from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including, without limitation:

(a) The use or occupancy, or manner of use or occupancy, of the Premises by Lessee Parties;

(b) Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, or licensee of Lessee Parties, including, without limitation, Detainees, in, on, or about the Premises;

(c) Lessee's conducting of its business;

(d) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; and

(e) Any breach or default in performance of any obligation on Lessee's part to be performed under this Lease, whether before or during the Term or after its expiration or earlier termination.

13.3.2. Definition of Claims. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).